

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES OF AMERICA

V.

MATTHEW TUNSTALL

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CAUSE NO. 1:21-CR-00223-LY

**DEFENDANT'S UNOPPOSED MOTION TO CONTINUE TRIAL AND FOR  
EXTENSION OF DEADLINES**

**TO THE HONORABLE JUDGE YEAKEL, UNITED STATES DISTRICT JUDGE FOR  
THE WESTERN DISTRICT OF TEXAS:**

Defendant, Matthew Tunstall ("Mr. Tunstall"), by and through counsel, files this Unopposed Motion to Continue Trial and for Extension of Deadlines and in support shows the following:

**I.**

Discovery in this case is voluminous. To date, the government has produced 3,823,941 pages of discovery. Given the breadth of discovery, as well as counsel's trial conflicts described below, defense counsel requires an extension of all deadlines by at least 90 days to provide Mr. Tunstall effective assistance of counsel.

**II.**

This case is currently set for trial on **October 3, 2022**. Mr. Tunstall's pretrial motions are currently due on **August 26, 2022**, and Docket Call is currently set for **September 16, 2022**.

### III.

Undersigned counsel requests that the above trial date – and all pending deadlines, including the parties’ pretrial motions and response deadlines – be extended by at least ninety (90) days for the following reasons:

1. **The discovery in this case is voluminous.** Counsel has been unable to review the 3.8 million pages of discovery that has been produced and needs additional time to review each document. Given the volume of material produced in discovery, the current deadlines would deny defense counsel reasonable time necessary for effective representation. *See* 18 U.S.C. 3161(h)(7)(B)(iv).<sup>1</sup>

2. **Defense counsel has a preferentially set trial on October 17, 2022, that will interfere with effective preparation of Mr. Tunstall’s matter.** Counsel represents a defendant in a multi-party case that is preferentially set on October 17, 2022 (Cause No. D-1-GN-18-006739; *Citizens, Inc., CICA Life, LTD., and Citizens Life Insurance Company of America v. Randall H. Riley, et al.*; in the 419th Judicial District, Travis County, Texas). At the last jury setting in that case, the parties announced ready but were not reached. Afterwards, due to the complexity of the case (as well as the court’s scheduling issues), the administrative judge specially and preferentially set the matter for trial on October 17, 2022. Given the proximity of that trial to Mr. Tunstall’s current setting, counsel will be

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<sup>1</sup> *See Wiggins v. Smith*, 539 U.S. 510, 534 (2003) (failure to investigate is not reasoned strategic judgment); *Rompilla v. Beard*, 545 U.S. 374, 395-96 (2005) (O'Connor, concurring) (finding ineffective assistance when defense counsel failed to properly investigate critical issue); *Sims v. Livesay*, 970 F.2d 1575, 1580-81 (6th Cir.1992) (defense counsel ineffective for failure to conduct an independent investigation and failed to ask a defense expert to examine the evidence); *Driscoll v. Delo*, 71 F.3d 701, 709 (8th Cir.1995) (defense counsel's failures to prepare for the introduction of

unable to provide effective representation of either client if the current trial schedule remains. And given the difficulty the parties have had in bringing that case to trial, defense counsel requests a continuance in this case to allow that case to proceed as set.

3. **The parties agree that the trial in this matter should be continued to February 2023.** Counsel for Mr. Tunstall conferred with counsel for the United States about the relief requested in this motion. The government is unopposed to continuing the trial date and deadlines as requested and – given each counsel’s current trial schedules – agrees that, to the extent the Court is amenable, a trial setting in February 2023 is preferred.

**IV.**

Undersigned counsel requests that the Court extend all deadlines in this case – including pretrial motions – by at least ninety (90) days.

**V.**

Trial Attorneys for the Department of Justice, Michael Lang and Celia Choy, were contacted about this Motion and are **unopposed to extending all deadlines by 90 days.**

**VI.**

This Motion is made not for the purpose of delay but so that justice may be done.

**WHEREFORE, PREMISES CONSIDERED,** Defendant requests that the Court extend all deadlines in this matter by at least ninety (90) days.

Respectfully submitted,

**SUMPTER & GONZÁLEZ, L.L.P.**

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scientific evidence and “to subject the state's theories to the rigors of adversarial testing” constituted ineffective assistance).

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**ATTORNEY FOR DEFENDANT  
MATTHEW TUNSTALL**

**CERTIFICATE OF SERVICE**

By my signature below, I do hereby certify that on August 15, 2022, a true and correct copy of the foregoing Unopposed Motion to Continue Trial and for Extension of Deadlines was filed using the Court's electronic filing system, which will provide notice to all parties of record.

/s/Worth D. Carroll  
Worth Carroll

**CERTIFICATE OF CONFERENCE**

Counsel for Mr. Tunstall discussed his request for an extension of all deadlines counsel for the United States, and the government is unopposed to the requested continuance and extension.

/s/Worth D. Carroll  
Worth D. Carroll

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**ORDER**

CAME ON for hearing on \_\_\_\_\_ August, 2022, the foregoing Defendant's Unopposed Motion to Continue Trial and for Extension of Deadlines, and the Court finds that for the reasons stated in the Defendant's motion, the ends of justice served by the extension outweigh the best interest of the public and the Defendant in a speedy trial.

The Court further finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the period of delay resulting from this extension shall be excluded in computing the time within which the trial must commence under the Speedy Trial Act.

**IT IS ORDERED THAT** the pretrial motions deadline is continued until the \_\_\_\_ day of \_\_\_\_\_, 2022, the hearing on all pending pretrial motions/docket call is continued until the \_\_\_\_ day of \_\_\_\_\_, 2022, and that jury selection/jury trial is continued until the \_\_\_\_ day of \_\_\_\_\_, 2023.

SIGNED on \_\_\_\_\_ August, 2022.

\_\_\_\_\_  
JUDGE YEAKEL